

ry marriage to be held, had wilfully refused to consummate the marriage. A

In *Jodla v. Jodla*⁽²⁾ the parties, who were Roman Catholics, married at a register office but agreed that they would have a church ceremony before the marriage would be consummated. The wife made several requests to the husband to proceed with the church ceremony but he refused. It was held that the wife would be granted a decree of nullity because the wilful refusal to consummate the marriage was the husband's, as he had failed to arrange for a church ceremony, which would have been just cause for the wife, having regard to their faith, to have refused intercourse if it had ever been requested.

This case was followed in *Tan Siew Choon v. Tan Kai Ho*⁽³⁾ where the parties, both Chinese, were married at the Registry of Marriages in Singapore. It was agreed that this ceremony was to be followed by another ceremony held in accordance with Chinese custom. It was understood that there would be neither cohabitation or consummation of the marriage pending the Chinese ceremony. Despite a request from the wife that arrangements be made for the Chinese ceremony, no response was made by the husband and after waiting for several months, the wife discovered that the husband had been living with another girl for quite some time and was informed that he was engaged to marry the girl. The wife petitioned for a decree of nullity of the marriage on the ground that the marriage had not been consummated owing to the wilful refusal of the husband to consummate the marriage. On the facts, a decree nisi declaring the marriage null and void on that ground was granted to the wife.

In the present case, the respondent faces a similar situation and he is, in my judgment, entitled to the declaration sought in his cross-petition. Accordingly, a decree nisi declaring the marriage between him and the petitioner null and void is made in respect of his cross-petition on the ground of wilful refusal by the Petitioner to consummate the marriage.

The respondent does not ask for his costs and no order is made therefor.

Order accordingly.

Solicitors: Advani, Hoo, Morris & Kumar;
Choo, Chan & Wong.

SALLEH BIN HJ. ALI HASSAN v. PUBLIC PROSECUTOR

[O.Cr.J. (Roberts C.J.) October 4, 1986]

[Bandar Seri Begawan — Criminal Motion No. 30
of 1986]

Criminal Law and Procedure — Habeas corpus — Period in police lock-up — Sentence of 12 months to run from date of arrest — Whether remission applies to period in lock-up — Criminal Procedure Code (Cap. 7) s. 341 — Prisons Act (Cap. 51) ss. 2, 3, 7, 43 & 61 — Prisons Rules, rr. 31(a) & 41.

Prisons — Detention in lock-up — Remission of sentence — Prisons Act (Cap. 51), ss. 2, 3, 7, 43 & 61 — Prisons Rules rr. 31(a) & 41.

The question for decision in this application under section 341 of the Criminal Procedure Code is whether it is proper for the Director of Prisons to apply the provisions for remission of one-third sentence to that period which the applicant spent in police custody, i.e. in a police lock-up from January 28 to February 26, 1986. The applicant was sentenced on September 23, 1986 to a period of 12 months' imprisonment. The court ordered that the sentence should run from the date of the applicant's arrest, which was January 28, 1986.

Held, dismissing the application: the system of remission of sentences under the Prisons Act can apply only to periods of custody in a prison as defined in the Act itself, i.e. in a building declared to be a prison under section 3 of the Act and not to detention in a lock-up.

F CRIMINAL MOTION.

D.S. Sandhu for the applicant.

Dy. Hayati (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Roberts C.J.: This is an application under section 341 of the Criminal Procedure Code, which provides a useful summary method of obtaining relief in the nature of *habeas corpus*. Where it is alleged that a person is illegally or improperly detained in public or private custody within Brunei, an application may be made to the High Court, supported by affidavit or oral evidence, stating where and by whom the applicant is detained, and the facts relating to such detention.

I In this instance, such an application was instituted, by the proper procedure, by Mr. Sandhu, on behalf of the applicant.

The applicant was sentenced on September 23, 1986 to a period of 12 months' imprisonment. The Court ordered that the sentence should run

from the date of the applicant's arrest, which was January 28 of this year.

It appears that the applicant was in police custody, in a police lock-up, from January 28, until February 26 and that it was only on the latter date that he was transferred into the custody of the Director of Prisons.

The basis of the application is that, if the applicant, who is admitted to have behaved himself well, while in custody, were to receive a one-third remission for the whole period of his custody, he should already have been released. If, on the other hand, the one-third remission could apply only to the period during which he has been in the custody of the Director, then assuming that he earned the maximum remission, he would not be due for release until October 8.

The question, therefore, is whether it is proper for the Director to apply the provisions for remission to that period which the applicant spent in police custody. To determine this question, it is necessary to look at the wording of the Prisons Act.

The term "prison" is defined in section 2 of the Act, "as any house, building, enclosure or place or any part thereof declared to be a prison, under section 3." And prisoner means "any person, whether convicted or not, under confinement in any prison." Section 3 provides that "His Majesty may declare by notification in the *Gazette*, any house, building, enclosure or place to be a prison for the purpose of the Act."

By *Gazette* Notification No: 83 of 1980, the Jerudong male prison, in which the applicant has been detained since February 26, was declared to be a prison for the purposes of the Act.

Section 7 of the Act empowers His Majesty in Council, by notification in the *Gazette*, to appoint what are called lock-ups at police stations and court houses, as places for the confinement of persons remanded or sentenced to terms of imprisonment not exceeding one month.

A number of police stations, including the one in which the applicant was kept in custody from January 28 to February 26, were appointed

A as police lock-ups under section 7(1) by *Gazette* Notification No. 74 of 1979.

B Section 7(2) of the Prisons Act provides that a lock-up shall not, "save as hereinafter provided," be deemed to be a prison for the purposes of the Act. Furthermore, it provides that Rules made under the Act (which must include the Prisons Rules) shall not apply to a lock-up.

C The point is further underlined by section 7(3) which states that a lock-up shall be deemed to be a prison for the purposes of section 61 and Part IV other than section 43, which deals with the discharge of a prisoner who has been awarded a remission of his sentence.

D If any further indication were necessary, that it was not intended that a period of custody in a lock-up should be treated as if it were part of a sentence of imprisonment, this can be found in Part VI of the Prisons Rules, which sets out the remission system.

E Rule 41 provides that a convicted prisoner sentenced to a term of imprisonment shall be entitled to or granted a remission of one-third of his sentence. In Rule 31(a) it is stated that "a term of imprisonment shall be deemed to run from the first moment of the day on which the sentence begins."

F By section 2 of the Act, "sentence of imprisonment" is defined as any sentence involving confinement in a prison.

G I, therefore, have no hesitation in concluding that, for all these reasons, the system of remission of sentences under the Prisons Act, can apply only to periods of custody in a prison as defined in the Act itself, that is to say, in a building declared to be a prison under section 3 of the Act and not to detention in a lock-up.

H I must, therefore, refuse the application and uphold the Director's interpretation of the way in which the system of remission should work in the case of this applicant.

I *Application dismissed.*

Solicitors: *Sandhu & Co.*